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NCBC GULFPORT
5090.3a

LETTER REQUESTING EVIDENTIARY HEARING SUPPORTING ATTACHED PETITION FOR
REMEDICATION OF CONTAMINATION NCBC GULFPORT MS

3/12/1996
NCBC GULFPORT

39501-ASSOCIATED AO
10.06.00.0003

5090
Code 16/480

12 JUN 1996



DEPARTMENT OF THE NAVY
NAVAL CONSTRUCTION BATTALION CENTER
5200 CBC 2ND STREET
GULFPORT, MISSISSIPPI 39501-5001

Charles H. Chisolm, Head
Office of Pollution Control
Mississippi Department of Environmental Quality
P. O. Box 10385
Jackson, MS 39289-0385

Dear Mr. Chisolm:

The attached Petition is provided pursuant to Section 49-17-41, Mississippi Code Annotated, so that NCBC Gulfport may obtain an evidentiary hearing before the Commission in regards to your agency's Administrative Order No. 319396.

We believe it is necessary to request such a hearing in order to preserve our ability to later raise before the Commission, those concerns we have with the Order which may not be adequately resolved in anticipated future discussions between our staffs. I do want to assure you, however, of our commitment to work with MDEQ to identify and implement whatever measures may hereafter be deemed necessary to adequately protect the health and well being of the members of this community as well as the environment at large.

In the interim, we are proceeding with actions necessary to comply as much as possible, with the initial target date of 1 May 1996, for submission of overall delineation plans for on-site hazardous waste, contamination and off-site migration.

We look forward to productive discussions with your staff and resolution of our concerns. My points of contact are Gordon Crane at (601) 871-2485, LT Carol Womack at (601) 871-3118, and my Staff Judge Advocate LT Jason Golden at (601) 871-2626.

Sincerely,

F. P. DIGORGE, III
CAPT, CEC, U.S. Navy
Commanding Officer

10.6.0.3

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

vs.

Order No. 3193 96

U.S. DEPARTMENT OF THE NAVY
NAVAL CONSTRUCTION BATTALION CENTER
AND
U.S. DEPARTMENT OF THE AIR FORCE

RESPONDENTS

PETITION

COMES NOW, the respondent, U.S. Department of the Navy, Naval Construction Battalion Center, Gulfport and pursuant to Section 49-17-41, Mississippi Code Annotated (Supp. 1995), hereby requests an evidentiary hearing before the Commission on matters contained in Administrative Order 3193 96. This order was issued against Respondent ex parte by Executive Director, Mississippi Department of Environmental Quality (MDEQ), on 13 February 1996.

GROUND FOR COMPLAINT

Respondent expresses the following reasons and grounds for opposing the aforesaid Administrative Order as so issued:

1. That such issuance was contrary to the legislative mandate expressed in Section 49-17-17, Mississippi Code Annotated (Supp. 1995) favoring the utilization of "cooperative agreements" with federal agencies, public and private institutions, affected groups and industry for furtherance of the performance of the Commission's duties to carry out the provisions of Section 49-17-1 through 49-17-43 of the Code. Existing MDEQ policy as reflected in the Office of Pollution Control's September 1990 technical memorandum entitled "Guidance for Remediation of Uncontrolled hazardous Substance Sites in Mississippi" also contemplates the use of negotiated (i.e., consent) orders for establishing the future course of site remedial investigations by responsible parties (See paragraph 0-1, Figure 1-1, Uncontrolled Sites-Model Site Flow Chart). Based upon past discussions with MDEQ representatives it was Respondent's expectation that MDEQ would provide a draft consent order for negotiation between the parties. By deciding instead to issue,

without prior notice, the present unilateral Order, MDEQ effectively precluded the Respondent from previously raising and the parties from mutually resolving up front the concerns which now give rise to the filing of this petition.

2. That those portions of the Order which directly or indirectly relate to the incinerated soils (ash) previously deposited on Site 8A onboard NCBC Gulfport are not ripe for issuance; because the Respondent has previously submitted for consideration by MDEQ, a petition for the delisting of such material as hazardous waste. Respondent is of the belief that the Order effects a constructive denial of it's delisting petition without full consideration by MDEQ, and that such denial would be contrary to MDEQ policy regarding the proper processing of such petitions.

3. That the order as issued is overly broad, in that it directs Respondent to undertake, within specified or hereafter to be approved time frames, certain investigative and follow-on remediation activities to address dioxin "and other contaminant" releases onboard NCBC Gulfport. This direction conflicts with Respondent's specific authorities under federal law to independently manage the undertaking of such activities. Such authority was given to Respondent by way of Executive Order 12580, which delegated the specific authorities to the President to respond to hazardous substance releases onboard federal installations under Section 104 of the Comprehensive Response, Compensation and Liability Act, (42 U.S.C. 9601 et. seq.). Moreover, such direction is inconsistent with the powers granted to the Secretary of Defense under Title 10, United States Code, Section 2701, for execution of the Defense Environmental Restoration Program (DERP). Respondent does not believe that the statutory authorities relied upon by the Commission (Sections 49-17-1 et. seq. and 17-17-1 et. seq.) can be used to preempt the authorities granted to Respondent under CERCLA, DERP and the National Contingency Plan (NCP).

4. That the Order as issued is overly broad in that it directs the Respondent to undertake certain "off-site" investigative activities to delineate both the vertical and horizontal extent of dioxin "and other contaminants" in soil, sediment, surface water and groundwater as far away as Bernard Bayou, which is roughly five miles from NCBC, Gulfport. Respondent believes that this requirement for such extensive delineation is not supported by the results of sampling data collected to date by Respondent as previously provided to MDEQ representatives.

5. That the specific deadlines set forth in the Order for

the submission of certain contaminant delineation, remediation and monitoring workplans, as well as for the execution of follow-on field investigative and remedial activities, are arbitrary and do not appropriately take into account legal limitations on the Respondent's ability to expend only those funds appropriated annually by Congress for environmental restoration purposes. Moreover, they don't take into account the Respondent's future budgetary planning requirements or the processing times associated with Respondents's compliance with all applicable federal procurement regulations in acquiring contractor services necessary to complete such activities.

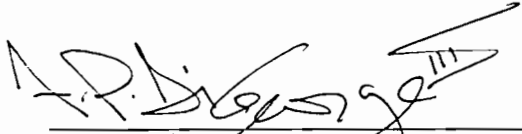
6. That to comply with specific sequencing of those "on-site" and "off-site" delineation and remediation, interim corrective measure and groundwater and biological monitoring activities required by the Order, would result in Respondent's inefficient use of limited environmental restoration funding and contractor resources. For example, the proper scoping of "off-site" biological monitoring should, in large part, be determined by the results of any off-site delineation of contaminated soils, sediment, surface and groundwater. Yet, as presently structured under the Order, Respondent will have to submit for approval, a biological monitoring plan before the results of any off-site delineation activities are known. Additionally, Respondent must submit a delineation plan by 1 May 1996, for determining the vertical and horizontal extent of contamination in groundwater (as well as soils, sediment, and surface waters on-site) prior to definitively determining the direction of groundwater flow beneath the facility. Moreover, Respondent is required to submit by 1 May 1996, a workplan/ schedule for implementing appropriate interim corrective measures to reduce contaminated sediment, soil, groundwater and surface transport "off-site" before Respondent will have fully delineated all areas of contamination "on-site" (i.e., all potential sources for such "off-site" contamination).

7. That certain terms contained in the Order are ambiguous and will, if not suitably clarified, unduly hamper the Respondent's future ability to properly scope and manage those investigative and remedial efforts needed to comply with those terms of the Order to which the Respondent may be properly subject. These include use of the words "on-site" in some areas of the Order while "on-base" is used in another part of the Order. In addition, "other contaminants" and "levels of concern" are used without definition. Moreover, the specific legal authority(ies) relied upon for each of the requirements set forth in the Order cannot be reasonably determined given the lack of corresponding citations. Given this fact, Respondent requests the right to supplement this Petition with whatever additional legal or technical arguments it deems would be appropriate for consideration by the Commission at the

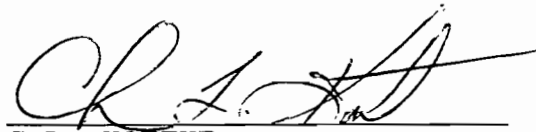
time of the hearing.

NOW THEREFORE, the undersigned authority, duly authorized to respond on behalf of the Respondent, U.S. Department of the Navy, Naval Construction battalion Center, Gulfport, does hereby formally request that Respondent be afforded a hearing on the matters set forth in this petition and does so swear that the matters contained herein are true and accurate to the best of his knowledge and belief.

Date: 12 March 1996


F.P. DiGEORGE, III
CAPT, CEC, U.S. Navy
Commanding Officer

Sworn before me this 12th day of March 1996. I certify that I am a person authorized to administer oaths in accordance with Title 10, United States Code, Section 936.


C.L. KOTTKE
LT, JAGC, USNR
Staff Judge Advocate